

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NOS.: 1:20CR186 and
)	1:20CR187
Plaintiff,)	
)	JUDGE SARA LIOI
)	
v.)	
)	
DAVID PECE, ET AL. and)	<u>MOTION TO CONSOLIDATE</u>
RICHARD EBY)	
)	
Defendants.)	

Now comes the United States of America, by and through its counsel, Michelle M. Baeppler, First Assistant United States Attorney, and Michael A. Sullivan, Assistant United States Attorney, and respectfully moves the Court to consolidate, for trial, Case No. 1:20CR186 and Case No. 1:20CR187, pursuant to Rule 13 of the Federal Rules of Criminal Procedure.

David Foster and Richard Eby are two of seven co-conspirators charged in two separate indictments with the same four offenses. Foster is charged in Case No. 1:20CR186 along with five other defendants, David Pece, Myron Brown, Mark Delacruz, Richard Avery, and Ethan Shives. Eby is charged in Case No. 1:20CR187 by himself. The four counts of each indictment are identical, alleging the same group of defendants engaged in the same conduct and charging the same four offenses. In Case No. 1:20CR186, Eby is referred to as Co-conspirator #1. In Case No. 1:20CR187, Pece, Brown, Delacruz, Foster, Avery, and Shives are each named, but not charged.

Pece, Brown, Delacruz, Avery, and Shives have all entered plea agreements disposing of their respective charges in Case No. 1:20CR186. Foster and Eby have each demanded a trial. A trial of Case No. 1:20CR187 will require the same exhibits and testimony from the same witnesses as Case No. 1:20CR187; including testimony from as many as four victims. In order to spare the victims the trauma of having to testify twice, the United States has indicated from the outset of these cases that, if they were to go to trial, the United States would move to consolidate the two cases.

“The court may order that separate cases be tried together as though brought in a single indictment or information if all offenses and all defendants could have been joined in a single indictment or information.” *F.R.Crim.P. 13*.

“The indictment or information may charge 2 or more defendants if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses.” *F.R.Crim.P. 8(b)*.

Here, Foster and Eby are alleged to “have participated in the ... same series of acts or transactions constituting ... offenses” and consequently they could have been joined in a single indictment (as Foster was with the other five defendants). Therefore, the court may order these cases to be tried together.

In the interest of judicial economy and to spare the victims the need to have to testify twice concerning identical facts, the United States respectfully requests that Case No. 1:20CR186 and Case No. 1:20CR187 be consolidated for trial.

Respectfully submitted,

MICHELLE M. BAEPPLE
First Assistant United States Attorney

By: /s/ Michael A. Sullivan
Michael A. Sullivan (NY: 2249993)
Assistant United States Attorney
United States Court House
801 West Superior Avenue, Suite 400
Cleveland, OH 44113
(216) 622-3977
(216) 522-8355 (facsimile)
Michael.A.Sullivan@usdoj.gov